THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.24376 of 2005

Date: 13th December, 2007

Between :-

M/s.Hero Siri Motors, a partnership firm,
Rep.by its Managing Partner,
Sri Ksivarama Krishna Prasad and another .. Petitioners

And

Indian Bank, rep.by its Authorised Officer,
Circle Office, Visakhapatnam
And another .. Re

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.24376 of 2005

ORDER:-

Heard Sri C. Rama Chandra Raju, the learned Counsel representing the writ petitioners and Sri M.Sivananda Kumar representing the respondents.

2. W.V.M.P.No.2412/2007 is filed to vacate the interim order made on 15-11-2005 in W.P.No.24376/2005.

3. This Court ordered *notice before admission* and made the following Order on 15-11-2005:-

> *"Notice before admission returnable in two weeks.*
>
> *The learned Counsel for the petitioners is permitted to take out personal notice to the respondents and filed proof of service.*

From a perusal of the statement of account issued by the respondents on 22-10-2004, it is evident that up to 18-10-2005, the balance on the part of the petitioners was Rs.2,53,000/- and on that day, a sum of Rs.5,38,943/- was added towards "MOT". It needs to be verified as to what it connotes.

There shall be an interim stay of further proceedings in all respects, in relation to any proceedings initiated against the property offered by the petitioners as security, for a period of four weeks.

Post after two weeks."

4. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in insisting the petitioner to vacate from his house property bearing T.S.No.2021 and 2022, Door No.8-4-25, admeasuring 865 sq.yds., situated at Banarjeepet, Eluru, without deciding his claim for One Time Settlement and without explaining the details of account is illegal, irregular, arbitrary and violative of principles of natural justice and provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter, in short, would be referred to as 'the Act' for the purpose of convenience*) and offends Articles 14, 21 and 300-A of the Constitution of India and consequently direct the respondents not to evict the petitioner from his said house property pursuant to notice dt.26-5-2004 issued by the 1st respondent and pass such other suitable orders.

5. It is stated that *the 1st petitioner is the partnership firm and the 2nd petitioner who had sworn to the affidavit is the Managing Partner of the Firm and also stated that his wife is also one of the partners of the 1st petitioner. It is also stated that the 1st petitioner firm availed loan from the 2nd respondent and that he mortgaged his house property, RCC Building situated in T.S.No.2021 and 2022 at Banerjeepet, Eluru, admeasuring 865 sq.yds., to the 2nd respondent towards security for the said loan. It is further stated by the 2nd petitioner that the amount availed was only Rs.15.00 lakhs and he repaid several amounts, but he could not repay as per repayment schedule due to severe drought conditions prevalent during last four years. Further it is stated that the 1st respondent had issued a notice dt.26-5-2004 under Section 13(2) of the Act thereby demanding the 2nd petitioner to repay the liabilities within 60 days there from and that immediately he approached the 1st respondent and requested to grant some time and extend OTS, so that he could sell some property and settle the amount. The 1st respondent asked the petitioner to give a representation to that effect and accordingly, he submitted a representation then and there itself and that the 1st respondent asked him to prepare the amount and he would consider for settlement of amount in OTS scheme. It is also stated by the 2nd petitioner that he could not retain a copy of his*

representation and that he was under impression that the 1st respondent would inform him accepting his claim for OTS. It is also further stated that on 5-10-2005 the Officers of respondents came to 2nd petitioner's house and asked him to pay the entire amount or vacate his house and that he requested them to consider his representation, but they stated that they were unconcerned with the same. Being helpless, he paid Rs.10.00 lakhs on 6-10-2005; Rs.75,000/- on 11-10-2005; Rs.50,000/- on 15-10-2005 and Rs.50,000/- on 18-10-2005. It is also stated that after all these repayments, the respondents had shown still the petitioner has to pay Rs.2,53,015/- and the respondents also again added Rs.5,38,943/- on 18-10-2005 as penal interest and brought the outstanding Rs.7,91,958/-. In fact, the petitioner paid Rs.40,000/- again on 10-11-2005 and after such payment, the due should be Rs.1,53,015/-. It is also stated that if OTS scheme is extended, the petitioner need not pay any amount. Further it is stated that on 11-11-205 the respondents and their staff again came to the petitioner's house and demanded him to pay Rs.7,91,958/- or else to vacate the house and when he requested the respondents to consider his case for OTS and to explain how Rs.5,38,943/- was added to his account on 18-10-2005, they stated that it was penal interest and expenses and they did not furnish him any details of composition how Rs.5,38,943/- was included in his account as debt. The respondents are bound to consider the petitioner's claim for OTS and furnish him a

detailed copy of account. It is also stated that pending such decision, the respondents cannot resort to highhanded dispossession from petitioner's house property and also stated that the respondents took his signatures on several papers many a time, so as to prepare paper proceedings, without legitimately acting on his request. The action of the respondents in demanding the petitioner to vacate from his house property is illegal, irregular, arbitrary and violative of principles of natural justice and provisions of the Act and offends Article s14, 21 and 300-A of the Constitution of India. In such circumstances, the writ petitioner approached this Court praying for appropriate reliefs.

6. The account copy, receipt and certain other papers also had been placed before this Court.

7. In the counter affidavit filed it is stated that *the petitioners are having an effective alternative remedy, under the provisions of the Act, under Section 17 of the Act before the Debt Recovery Tribunal. With reference to the averments in para 4 of the affidavit filed in support of the Writ Petition, in para 5 it is stated that the petitioners did not ever submit any proposals for one time settlement. Any such proposal, or request of the petitioners shall necessarily be processed through the 2nd respondent only and no such request of petitioners was submitted to the 2nd respondent. In this context itself, it may be noted that as a matter of fact, the petitioners are not entitled for settlement under one time settlement*

scheme, as so such scheme is in vogue as at the time referred to in paragraph 4 of the petitioner's affidavit. It is also stated that it is false to alleged that of receiving the notice dated 26-5-2004, the 2nd petitioner had approached the 1st respondent and request him to grant some time and extent OTS so that he can sell the property and settle the account and thereupon he was asked by the 1st respondent to give a representation to that effect and accordingly he had submitted representation then and there itself and the 1st respondent advised him to prepare amount and 1st respondent would consider for settlement of the account under OTS scheme and that he could not retain a copy of the representation and remained under the impression that the 1st respondent would inform him accepting his claim for OTS are all false and invented and also it is stated that in this context, it is significant to note that the petitioners have not recorded anywhere about the exact proposals for OTS or rather the offer made by them to the Banks for settlement. Further it is averred in para 6 that the averment that on 5-10-2005, when Officers of the respondents visited the 2nd petitioner's house, he requested them to consider his representation and then the officers stated that they were unconcerned with the same and therefore being helpless he made remittances later is false and invented. Further it is averred that the petitioners never proposed or offered to any amount and also stated that on the other hand, the petitioners have willfully failed and neglected to repay the

debt due. It is also further averred after adjusting the part payment referred to in para 5 of the petitioner's affidavit, the respondents added Rs.5,38,943/- on 18-10-2005 as penal interest and brought the outstanding to Rs.7,91,958/- is absolutely incorrect and not at all true. It is also averred that a sum of Rs.5,38,943/- debited to the account of the 1st petitioner represents the unserviced interest being MOI, which was not specifically debited to the running account or shown in the running account ledger, of the 1st petitioner from the time the account became the NPA in accordance with the accounting practices of the Bank and therefore, the said amount is not penal interest, but interest charged in accordance with the contract and the guidelines of Reserve Bank of India issued from time to time. It is also further averred the allegation in para 6 of the petitioners' affidavit are not at all true and correct and it is stated that as a matter of fact on 19-2-2005 the respondents took possession of the property given as security in accordance with law and with advance and proper notice to the petitioners. It is also further stated that the averment that the respondents were requested to consider petitioner's case for OTS and explain how Rs.5,39,943/- was debited to his account on 18-10-2005 and then the Officers of the respondents stated that it was penal interest and expenses is absolutely false. No such convrsation took place at any time and as already submitted the amount debited on 18-10-205 is not inclusive of penal interest at all. It is also further stated that the averment that the respondents are

bound to consider the petitioner's claim for OTS is vexatious and incorrect. Further certain other averments had been made in paras 10, 11, 12 of the counter affidavit as well.

8. In the light of the respective stands taken by the parties, inasmuch as, several of the controversies cannot be gone into, the writ petitioners are at liberty to invoke the alternative remedy. Further, since the petitioners are insisting for the relief of One Time Settlement – OTS, let the petitioners make a representation to respondents in this regard, within a period of four weeks from today and let the respondents take appropriate decision in this regard in accordance with law within a period of four weeks thereafter. Except making this observation, no further relief can be granted in this Writ Petition.

9. The Writ Petition is accordingly disposed of. No order as to costs.

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Justice P.S.Narayana

13th December, 2007

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